UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

DATE: OCT 31 2005

SUBJECT: Request for a $2 Million Statutory Exemption and Ceiling Increase for a CERCLA Removal Action at the Westwood Chemical Corporation Site, City of Middletown, Town of Wallkill, Orange County, New York – **ACTION MEMORANDUM**

FROM: Dilshad J. Perera, On-Scene Coordinator
Response and Prevention Branch

TO: Alan J. Steinberg
Regional Administrator

THRU: George Pavlou, Director
Emergency and Remedial Response Division

Site ID No.: WN

I. PURPOSE

The purpose of this Action Memorandum is to request and document approval of a $2-Million Statutory Exemption and ceiling increase of $500,000, bringing the Total Project Ceiling to $2,450,000 with which to continue a time critical removal action to dispose of hazardous substances present at the Westwood Chemical Corporation site located at 146 Tower Drive, City of Middletown, Town of Wallkill, Orange County, New York 10941 ("Site").

On February 22, 2005, New York State Department of Environmental Conservation ("NYSDEC") requested that the U.S. Environmental Protection Agency ("EPA") conduct a time-critical removal action under the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. §§9601 et seq., at the Site, an abandoned facility that had formerly been operated by the bankrupt Westwood Chemical Corporation for antiperspirant active ingredient and water treatment agent manufacturing.

Pursuant to verbal authorization in the amount of $250,000 given on March 2, 2005 by the Acting Director, Emergency and Remedial Response Division (ERRD), EPA responded to the Site to provide Site security and initiate stabilization and cleanup activities. Subsequently on April 15, 2005, a ceiling increase and confirmation of verbal authorization Action Memorandum (annexed as Attachment A) was approved by the Acting Director, ERRD allocating $1,950,000 for the project ceiling for the continued response.

II. SITE CONDITIONS AND BACKGROUND

A. Site Description

1. Removal Site Evaluation

For a discussion of the original Site evaluation, see Attachment A, Section II.A.1.

During the course of the ongoing removal action, EPA identified and responded to the following:

- 77 intermediate and large bulk containers were inventoried. Approximately 260,000 gallons of process waste water and 2,600 gallons of corrosive liquids which had been contained in these bulk storage containers were consolidated and transported for disposal.
- Approximately 400 Totes (intermediate bulk containers) were identified on the Site containing liquid or solid wastes as follows:
    - Liquid wastes consisting of either or both of process waste water and/or corrosive liquids in excess of 70,000 gallons; or
    - Solid wastes consisting of approximately 27 tons of gel-like materials at the bottom of the totes, determined to be hazardous wastes as defined by the Resource Conservation and Recovery Act (RCRA) with the characteristic of "toxicity" (D010) for selenium.

  These wastes were transported for disposal.
- Approximately 450 fiber drums of dry materials that had been staged in the warehouse portion of the building at the Site, including goods that were in the process of being manufactured, or goods that had been completed and were off-specification, constituents of which materials included aluminum chlorohydrate and/or aluminum zirconium chlorohydrex, were transported for disposal.
- In excess of 1,200 laboratory containers including:
    - laboratory reagents and spent analytical waste from three on-Site laboratories, and other material generated in an on-Site research and development laboratory; and
    - Quality assurance and quality control ("QA/QC") samples of raw material and finished product from a small basement used for storage of QA/QC materials.

  Most of these materials have been transported for disposal.

The following materials or issues still need to be addressed:

- Lab-packs. Although most of the original laboratory chemicals have been consolidated and shipped off-Site for disposal in this removal action, there are laboratory chemicals remaining at the Site that still need to be consolidated, lab-packed and disposed. The classifications in this group include corrosives, ignitables and toxics. Lab-packing and consolidation of these materials has been done in this removal action, as an interim measure, so that the materials could later be safely transported for disposal.
- Fiberglass tanks formerly used in manufacturing processes at the Site are contaminated with remnants of raw materials, or materials that were product in the course of manufacture, and these materials have now become wastes. Some of these tanks have not yet been fully addressed. The remaining fiberglass tanks should be cut up and the resulting waste stream shipped for disposal.
- Contamination which may contain hazardous substances is present on walls and floors of facility and on dryers and associated motors and equipment at the facility.
- Wastewater will be generated from decontamination of building walls and floors and from decontamination of dryers and associated motors and equipment, and will need to be containerized and sent for disposal.
- Soils at the facility have been sampled and sent for analysis. ERRD is awaiting the interpretation of the soil data to determine whether soils at the facility need to be addressed.

2. Physical Location

See Attachment A, Section II.A.2.

3. Site Characteristics

See Attachment A, Section II.A.3.

4. Release or Threatened Release into the Environment of a Hazardous Substance, or Pollutant or Contaminant

The following hazardous substances have been identified by sampling analyses.

Hazardous Substance	Statutory Source for Designation as a Hazardous Substance
Hydrochloric Acid	CWA § 311(b)(2), CAA § 112
Sulfuric Acid	CWA § 311(b)(2)

Potassium Cyanide	CWA § 311(b)(2), RCRA § 3001
Arsenic Trioxide	CWA § 311(b)(2), RCRA § 3001
Selenium Compound	CWA § 307(a), CAA § 112

In addition, the following materials, present at the site, pose a human health threat for dermal contact or inhalation since, due to their hygroscopic nature, they become acidic once the substances absorb moisture from the air or moisture in the lungs or sweat on skin: zirconium basic carbonate; zirconium oxychloride; aluminum chlorohydrate; aluminum zirconium chlorohydrex. If released or exposed to water or other liquid, the materials could become hazardous waste with the characteristic of corrosivity.

5. NPL Status

At the present time, the Site is not on the NPL and there are no efforts underway to include the Site on the NPL.

B. Other Actions to Date

1. Previous Actions to date

NYSDEC through their contractors removed several containers of potentially shock-sensitive material. NYSDEC also procured 24-hour site security and arranged for the temporary restoration of power to the Site. NYSDEC also initiated the restaging of totes with corrosive labels from outdoor staging areas to inside the warehouse.

2. Current Actions

EPA initiated a removal action on March 3, 2005, by assuming the responsibility for 24-hour site security. EPA mobilized its Emergency and Rapid Response Service contractor to the Site on March 8, 2005, and continued the process of restaging the totes initiated by NYSDEC, and began the process of inventorying the hazardous substances and other chemicals that had been abandoned at the Site.

To date the following tasks have been accomplished:

- Approximately 335,000 gallons of process wastewater has been shipped off-Site for disposal.
- Approximately 1,200 tons of contaminated debris and solid material has been shipped off-Site for disposal.
- Approximately 27 tons of selenium-bearing hazardous waste has been shipped off-Site for disposal.
- Approximately 32,000 gallons and 200,000 pounds of material have been shipped off-Site for reuse.
- Approximately 65 poly and fiberglass bulk storage containers has been disassembled and shipped off-Site for disposal.

C. State and Local Authorities' Roles

1. State and Local Actions to Date

There are no actions currently being undertaken by either the state or local agencies.

2. Potential for Continued State/Local Response

EPA will continue to coordinate its activities with NYSDEC and with the local response community, including the Town of Wallkill through its Assistant Building Inspector.

III. THREATS TO PUBLIC HEALTH OR WELFARE OR THE ENVIRONMENT, AND STATUTORY AND REGULATORY AUTHORITIES

The conditions at the Site meet the criteria for a CERCLA removal action as described in the National Contingency Plan ("NCP") at 40 CFR § 300.415(b). Factors that support conducting a removal action at the Site include:

(i) Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances or pollutants or contaminants;
(ii) Actual or potential contamination of drinking water supplies or sensitive ecosystems;
(iii) Hazardous substances or pollutants or contaminants in drums, barrels, tanks, or other bulk storage containers, that may pose a threat of release;
(iv) Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released;
(v) Threat of fire and explosion; and
(vi) Unavailability of other appropriate federal or state response mechanism to respond to the release.

A. Threats to Public Health or Welfare

(i) Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances or pollutants or contaminants.

See discussion in Attachment A, Section III.A.(i).

There are several waste streams that have yet to be shipped off-Site for disposal. These waste streams include corrosives, ignitables and toxics. Unless these materials are addressed by EPA, there would be a potential of direct human contact with these materials by persons coming on to the Site. Also if these materials were to be left at the Site, they would be subject to heat and cold in the absence of electrical power at the Site, and subject also to rain, wind and other weather conditions through failure of building components, with the likelihood of eventual failure of the containers and the release of their contents, potentially posing a threat to the public.

(ii) Actual or potential contamination of drinking water supplies or sensitive ecosystems

See discussion in Attachment A, Section III.A.(ii).

(iii) Hazardous substances or pollutants or contaminants in drums, barrels, tanks, or other bulk storage containers, that may pose a threat of release

With prolonged storage of the hazardous substances on the Site, there is a potential for containers to fail (see Attachment A, Section II.A.I) particularly given the corrosive nature of the material manufactured at the Site as well as of some of the raw materials purchased by Westwood Chemical Corporation.

(iv) Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released

See discussion in Attachment A, Section III.A.(iv).

(v) Threat of fire and explosion

See discussion in Attachment A, Section III.A.(v).

There are still flammable waste streams on the Site in the form of lab-pack containers.

(vi) The availability of other appropriate federal or state response mechanism to respond to the release

Based on information provided to by the NYSDEC to EPA, NYSDEC does not have the funding or resources available to conduct a removal action to mitigate the threats posed by this Site.

B. Threats to the Environment

The primary threat to the environment is from the release or threatened release of the corrosive materials present at the Site. Because the Site slopes to the east, materials released from the Site could drain off and impact the Wallkill River, either directly or through the tributary which is immediately adjacent to the east of the Site. In addition, the corrosive materials could adversely impact the vegetative cover both on the Site and off the Site.

IV. ENDANGERMENT DETERMINATION

Actual or threatened releases of hazardous substances from the Site, if not addressed by implementing the response action selected in this Action Memorandum, may present an imminent and substantial endangerment to the public health or welfare or the environment.

V. EXEMPTION FROM STATUTORY LIMITS

1. There is an immediate risk to public health or welfare or the environment

Several of the waste streams remain on-Site and should be transported and disposed of. These include:

- Lab-packs. Although most of the original laboratory chemicals were consolidated and shipped off-Site for disposal, there are laboratory chemicals remaining at the Site that remain to be consolidated, lab-packed and disposed. The classifications in this group include corrosives, ignitables and toxics. Lab-packing and consolidation of these materials was done in the removal action as an interim measure in order to afford safe transport and disposal.
- Fiberglass tanks formerly used in the manufacturing processes at the Site are contaminated with remnants of raw materials, or materials that were product in the course of manufacture and that now are wastes. Some of these tanks have not yet been fully addressed. They should be addressed by cutting up the remaining fiberglass tanks and shipping the resulting waste stream for disposal.
- Contamination present on walls and floors of the facility and on dryers and associated motors and equipment at the facility.
- Wastewater which will be generated from decontamination of building walls and floors and from decontamination of dryers and associated motors and equipment, which will need to be containerized and sent for disposal.
- Soils at the facility have been sampled and sent for analysis. ERRD is awaiting the interpretation of the soil data to determine whether soils at the facility need to be addressed.

In the event the removal action terminates without removing these items, there will a potential for exposure to the public through unrestricted access to the Site, and through release of materials due to eventual failure of containers at the Site.

2. Continued response actions are immediately required to prevent, limit, or mitigate an emergency

As noted in the original Action Memorandum (see Attachment A) as well as in the Pollution Reports issued during the course of the current activities, numerous releases have occurred at the facility during the performance of the removal action as a result of the general state of disrepair of the facility and of additional damage caused by lack of utilities during the winter months following the shutdown of the facility in October 2004. As also described in the original Action Memorandum and the Pollution Reports, secondary containment in the exterior reactor farms developed cracks resulting in the release of material into the environment. In addition, piping associated with the tanks cracked in the extreme cold and released contents from the tanks. Should the removal action terminate without removing the last of the waste-streams, there is a potential for the containers to fail through continued degradation or through environmental factors,

such as changes in temperature. Water entering the building from the leaking roof could transport contamination at the facility into the environment.

VI. PROPOSED ACTIONS AND ESTIMATED COSTS

A. Proposed Actions

1. Proposed Action Description

The proposed removal action has included:

- Sampling of potentially hazardous substances in bulk storage tanks.
- Sampling of wastewater stored in totes and bulk storage tanks.
- Consolidation of small containers followed by sampling.
- Lab-packing of small containers.
- Tank and process-line removal.
- Cleaning of secondary containment.
- Decontaminating the production building.
- Sampling of additional materials potentially containing hazardous substances.
- Disposal off-Site, in accordance with CERCLA § 121(d)(3) and 40 CFR § 300.440 (regulation concerning off-site disposal), of materials that contain or may contain hazardous substances.

As discussed in Section V.1, above, contamination still remains at the Site, and additional actions are required, for which additional funding is sought, in order to properly complete this removal action.

2. Contribution to Remedial Performance

The Site is not on the NPL; however, activities proposed would not be inconsistent with potential remedial actions.

3. Description of Alternative Technologies

Alternative technologies will continue to be considered as long as the technology proves to be cost effective, timely and efficient.

4. Engineering Evaluation/Cost Analyses ("EE/CA")

Due to the time-critical nature of this Action Memorandum, an EE/CA will not be prepared.

5. Applicable and Relevant and Appropriate Requirements ("ARARs")

ARARs within the scope of this project, including RCRA regulations that pertain to the disposal of hazardous wastes, will be met to the extent practicable.

6. Project Schedule

This action was initiated through verbal authorization and was continued pursuant to the authorization contained in the Action Memorandum dated April 15, 2005 (Attachment A). It is currently anticipated that this removal action could be completed shortly.

B. Estimated Costs (rounded to nearest $1,000)

Extramural Costs:	Current Costs	Proposed Increase	Proposed Costs
Regional Allowance Costs: (Total cleanup contractor costs include labor, equipment, materials and laboratory disposal analysis)	$1,910,000	$ 450,000	$2,360,000
Other Extramural Costs not Funded From the Regional Allowance:			
Technical support	$ 40,000	$ 50,000	$ 90,000
Subtotal, extramural costs	$1,950,000	$ 0	$2,450,000
Extramural Costs Contingency (20%)	$ 0	$ 0	$ 0
TOTAL EXTRAMURAL COSTS	$1,950,000	$ 500,000	$2,450,000
TOTAL REMOVAL PROJECT CEILING	$1,950,000	$ 500,000	$2,450,000

VII. EXPECTED CHANGE IN THE SITUATION SHOULD ACTION BE DELAYED

Should action be delayed, hazardous substances presently located at the Site could be released and adversely impact human health and the environment. As described in Section II.A.1, above, there have been several releases at the Site since EPA commenced this removal action in March of 2005. EPA has been on the Site and responded to each such release.

VIII. OUTSTANDING POLICY ISSUES

None.

IX. ENFORCEMENT

EPA will assess the extent to which this removal action may be funded or reimbursed within Westwood's bankruptcy proceedings. In addition, EPA will seek to determine if there are any other financially viable Potentially Responsible Parties ("PRPs") who might reimburse the cost of the cleanup. However, due to the time-critical nature of this response, this Action Memorandum recommends funding for a fund-lead response action.

The total EPA costs for this removal action based on full-cost accounting practices that will be eligible for cost recovery are estimated to be $3,322,650.

This figure includes EPA's direct costs which include direct extramural costs and direct intramural costs. The figure also includes indirect costs. Indirect costs are calculated, consistent with EPA's full cost accounting methodology effective October 2, 2000, by multiplying the currently estimated indirect cost rate for Region 2 by the amount of the estimated direct costs of this removal action. The figure does not include pre-judgment interest, does not take into account enforcement costs, including Department of Justice costs, and may be adjusted during the course of the removal action. The estimates are for illustrative purposes only and their use is not intended to create any rights for responsible parties. Neither the lack of a total cost estimate nor deviation of actual total costs from this estimate will affect the United States' right to cost recovery.

Direct Extramural	$2,450,000
Direct Intramural	$ 100,000
Subtotal, Direct Costs	$2,550,000
Indirect Costs (Anticipated Regional Indirect Cost Rate 30.30% x $2,550,000)	$ 772,650
Estimated EPA Costs Eligible for Cost Recovery	$3,322,650

X. RECOMMENDATION

This decision document represents a request for Statutory $2 Million Exemption and ceiling increase for the current removal action at the Westwood Chemical Corporation Site, located at 146 Tower Drive, Middletown, Orange County, New York, developed in accordance with CERCLA, and not inconsistent with the NCP. This decision is based on the Administrative Record for the Site. Conditions at the Site meet the NCP Section 300.415(b)(2) criteria for a removal action.

This Action Memorandum, if approved, will authorize a total project ceiling is $2,450,000 with the additional $500,000 being provided from the FY-2006 Regional Advice of Allowance.

Please indicate your approval of the authorization of funding for the Westwood Chemical Corporation Site, as per the current Regional redelegation of authority, by signing below.

Approved: Alan J. Steinberg Date: 11-01-05

Alan J. Steinberg
Regional Administrator

Disapproved: _____ Date: _____

Alan J. Steinberg
Regional Administrator

Attachment:

cc: (after approval is obtained)

B. Sprague, 2ERRD-RPB
J. Daloia, 2ERRD-RPB
R. Salkie, 2ERRD-RAB
J. Witkowski, 2ERRD-RAB
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